Dato' Seri Mohammad Nizar bin Jamaluddin v Sistem Televisyen (M) Bhd & Anor

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO 23 NCVC-84–07 OF 2012
YEOH WEE SIAM J
12 APRIL 2013

Tort — Defamation — Justification — Whether defendant succeeded in proving news report defamatory of plaintiff was substantially true — Whether defendant's failure to practise responsible journalism was mitigated by absence of malice — Whether defence of fair comment on matter of public interest made out

The plaintiff sued the defendants for defaming him on a prime-time television news channel in connection with certain statements he had made on his Twitter account two days earlier. The plaintiff, a Member of Parliament and State Assemblyman and who held senior positions in an opposition political party and in the opposition coalition, had tweeted, without identifying any particular person, that someone had paid RM520,000 to bid for the registration No WWW1 ('the registration number') and that such an amount of money could have been used to help the poor in the State of Johor. The news report published by the defendants said, inter alia, that police had formed a special unit to investigate the plaintiff for alleging that the Sultan of Johor had used public funds to bid for the registration number following the lodging of police reports by various parties over the plaintiff's tweets. The news report also said the plaintiff's tweets had angered Johoreans and that the Crown Prince of Johor had subsequently denied that the Royal Family had ever used government funds allocated to them. The news report further said (which was later proved to be untrue) that the plaintiff through his Twitter account had apologised if his earlier tweets had caused offence. The plaintiff pleaded that the defendants' news report suggested that he was, inter alia, inciting hatred against the Sultan of Johor and accusing the Sultan of misuse of power and corruption and using the state government to achieve his personal ends. The plaintiff sought, inter alia, RM50m in damages, an injunction against the defendants, their agents or servants from further publication of the defamatory remarks and an order that they publish an open apology to him on the same prime-time news channel.

Held, dismissing the claim:

(1) Whilst the defendants' publication, considered in the natural and ordinary meaning of the words used, were defamatory of the plaintiff, the court found that the news report was in fact substantially true. The defendants had succeeded on the defence of justification which was a complete defence. They did not fail in that defence although that part of the news report which said the plaintiff had apologised on Twitter was erroneous (see paras 48–49).

(2) It was highly improbable that the plaintiff would have tweeted about the Sultan spending RM520,000 of the Sultan's own money to bid for the registration number. It was more probable the plaintiff, being a politician, was insinuating that the Sultan should not be using that amount in public funds since such funds could be better used to build 20 low-cost houses for the lower-income group. Any reasonable man would have concluded that the plaintiff's tweets were indirectly hinting at or alleging that the Sultan of Johor had used public funds to make the bid for WWW1 (see para 36).

(3) In his unreserved apology through a press statement, the plaintiff did not attempt to refute the various earlier press statements which stated that he had accused the Sultan of Johor of using public funds to make the WWW1 bid. One could therefore reasonably infer that the plaintiff himself accepted that his tweets carried the insinuation that the Sultan had made the bid using public funds (see para 47).

(4) Although the defendants failed to practise responsible journalism by failing to verify with the plaintiff himself on his tweets and getting his comments on the matter, such failure was mitigated by the absence of malice on their part. The court was therefore inclined towards allowing the defendants to be relieved of any liability for defaming the plaintiff (see para 58).

(5) The defendants had also clearly made out a defence of fair comment on a matter of public interest (see para 66).

[Bahasa Malaysia summary

Plaintif menyaman defendan-defendan kerana memfitnah beliau pada berita saluran television waktu perdana berkaitan dengan pernyataan tertentu yang dibuat olehnya diakaun Twitter nya dua hari sebelumnya. Plaintif, Ahli Parlimen dan Ahli Dewan Undangan Negeri dan yang memegang jawatan kanan di dalam parti politik pembangkang dan dalam pakatan pembangkang, telah melalui 'tweet'nya, tanpa mengenal pasti orang tertentu, bahawa orang tersebut telah membayar RM520,000 untuk membida pendaftaran No WWW1 ('nombor pendaftaran') dan bahawa jumlah wang sedemikian boleh

digunakan untuk membantu orang miskin di Negeri Johor. Laporan berita yang diterbitkan oleh defendan-defendan menyatakan, antara lain, bahawa polis telah membentuk unit khas untuk menyiasat plaintif yang mendakwa Sultan Johor telah menggunakan dana awam untuk membida nombor pendaftaran tersebut berikutan pembuatan laporan polis oleh pelbagai pihak terhadap 'tweets' plaintif. Laporan berita tersebut juga menyatakan 'tweets' plaintif telah menyemarakkan kemarahan orang-orang Johor dan bahawa Putera Mahkota Johor telah kemudiannya menafikan bahawa Keluarga DiRaja pernah menggunakan dana kerajaan yang diperuntukkan kepada mereka. Laporan berita selanjutnya menyatakan (yang kemudiannya dibuktikan sebagai tidak benar) bahawa plaintif menerusi akaun Twitter nya telah memohon maaf jika 'tweets' nya yang terdahulu telah menyebabkan kesalahan. Plaintif memplid bahawa laporan berita defendan-defendan mencadangkan yang beliau, antara lain, menghasut kebencian terhadap Sultan Johor dan menuduh Sultan menyalah guna kuasa dan rasuah dan menggunakan kerjaan negeri untuk mencapai matlamat peribadinya. Plaintif memohon, antara lain, ganti rugi RM50 juta, injunksi terhadap defendan-defendan, ejen atau pembantu mereka daripada terus menyiarkan kata-kata fitnah dan perintah bahawa mereka menyiarkan mohon maaf secara terbuka kepadanya di saluran berita warta perdana yang sama.

Diputuskan, menolak tuntutan:

(1) Sementara penyiaran defendan-defendan dipertimbangkan dalam maksud semula jadi dan biasa perkataan-perkataan yang digunakan, adalah memfitnah plaintif, mahkamah mendapati bahawa laporan berita tersebut sebenarnya adalah benar. Defendan-defendan telah berjaya atas pembelaan justifikasi yang mana adalah pembelaan penuh. Mereka tidak gagal dalam pembelaan tersebut walaupun bahagian laporan berita tersebut yang menyatakan plaintif telah memohon maaf di Twitter adalah salah (lihat perenggan 48–49).

(2) Adalah sangat tidak mungkin bahawa plaintif akan membuat kenyataan mengenai Sultan membelanjakan RM520,000 wang Sultan sendiri untuk membida nombor pendaftaran tersebut melalui 'tweet'nya. Ia adalah lebih berkemungkinan yang plaintif, sebagai ahli politik, menyindir bahawa Sultan tidak patut menggunakan jumlah wang dana awam tersebut memandangkan dana sedemikian lebih baik digunakan untuk membina 20 rumah kos murah untuk kumpulan orang berpendapatan rendah. Mana-mana orang munasabah akan menyimpulkan bahawa 'tweets' plaintif secara tidak langsung membayangkan kepada atau mendakwa bahawa Sultan Johor telah menggunakan dana awam untuk membida nombor WWW1 (lihat perenggan 36).

(3) Dalam permohonan maaf sepenuhnya melalui pernyataan akhbar,

plaintif tidak mencuba untuk menyangkal pernyataan akhbar sebelumnya yang menyatakan bahawa beliau telah menuduh Sultan Johor menggunakan dana awam untuk membuat WWW1 tersebut. Seseorang boleh secara muansabah membuat kesimpulan bahawa plaintif sendiri menerima bahawa 'tweets' nya mengungkapkan penyindiran bahawa Sultan telah membuat perbidaan menggunakan dana awam (lihat perenggan 47).

(4) Walaupun defendan-defendan gagal untuk mengamalkan kewartawanan bertanggunjawab dengan gagal untuk mengesahkan dengan plaintif sendiri mengenai 'tweets' nya dan mendapatkan komennya atas perkara tersebut, kegagalan sedemikian telah dikurangkan dengan ketiadaan niat jahat oleh pihak mereka. Mahkamah oleh itu cenderung kepada membenarkan defendan-defendan dilepaskan daripada apa-apa liabiliti kerana memfitnah plaintif (lihat perenggan 58).

(5) Defendan-defendan juga jelas membuat pembelaan komen adil atas perkara kepentingan awam (lihat perenggan 66).]

Notes

For cases on justification, see 12 *Mallal's Digest* (4th Ed, 2011 Reissue) paras 469–480.

Cases referred to

Adam v Ward [1917] AC 309, HL (refd)
Ayob bin Saud v TS Sambanthamurthi [1989] 1 MLJ 315; [1989] 1 CLJ 152; [1989] 1 CLJ (Rep) 321, HC (refd)
Chew Peng Cheng v Anthony Teo Tiao Gin [2008] 5 MLJ 577, HC (refd)
Chong Swee Huat & Anor v Lim Shian Ghee (t/a L&G Consultants & Education Services [2009] 3 MLJ 665, CA (refd)
Dato' Seri Anwar bin Ibrahim v Dato' Seri Dr Mahathir bin Mohamad [1999] 4 MLJ 58; [1999] 7 CLJ 32, HC (refd)
Edwards v Bell (1824) 1 Bing 403 (refd)
Hajijah Bana v Ramli Usop [2000] MLJU 161; [2000] 6 CLJ 184, HC (refd)
Lim Guan Eng v Utusan Melayu (M) Bhd [2012] 2 MLJ 394; [2012] 2 CLJ 619, HC (refd)
Reynolds v Times Newspapers Ltd [2001] 2 AC 127, HL (refd)
Sivabalan a/l P Asapathy v The New Straits Times Press (M) Bhd [2010] 9 MLJ 320; [2010] 7 CLJ 885, HC (refd)
Toogood v Spyring (1834) 1 Cr M & R 181 (refd)

Legislation referred to

Defamation Act 1957 s 8

Mohd Fitri bin Asmuni (Mohd Zamri bin Ibrahim with him) (Awi & Co) for the plaintiff.

Liew Teck Huat (Lim Qi Si and Wee Jason with him) (TH Liew & Partners) for the defendants.

Yeoh Wee Siam J:

[1] This is an action filed by the plaintiff against the defendants resulting from the defendants' publication in the Buletin Utama TV3 news report ('Buletin Utama') of materials regarding the plaintiff's tweets on 28 May 2012 in his Twitter account.

[2] The plaintiff is a Member of Parliament, a Member of the State Legislative Assembly of Perak for Pasir Panjang, a Member of the Central Committee of Parti Islam Semalaysia ('PAS') and the Head of the Opposition Pakatan Rakyat for Perak.

[3] The first defendant is a broadcasting television ('TV') company.

[4] The second defendant is sued in her capacity as the publisher of Buletin Utama for 30 May 2013 which was broadcasted in the TV3 channel at 8pm.

ENCLOSURE 1

[5] In the writ of summons and statement of claim, the plaintiff is claiming against the defendants:

(a) damages in the sum of RM50m including aggravated damages and/or exemplary damages for libel and/or slander;

(b) an injunction to restrain the defendants, and/or their employees and/or whoever publishes the defamatory news or any publication that has an effect on the plaintiff orally or in the print media and/or electronic media;

(c) an order that the defendants publish an open apology to the plaintiff in Buletin Utama in the form and according to the rules determined by the plaintiff;

(d) costs; and

(e) other reliefs deemed appropriate by the court.

THE PLAINTIFF'S TWEETS ON 28 MAY 2012

[6] The plaintiff through his Twitter account on 28 May 2012 tweeted the following three statements:

YB Mohammad Nizar

rm520K boleh dibelanjakan membantu rakyat melayu johor yang masih ramai miskin serta memerlukan bantuan utk kprluan hidup, bina 20 rumah pprt!;

YB Mohammad Nizar

but if comparing 24million diamond ring by rosmah, then rm520k 4 WWW1 reg plate is nothing! But how does 1 justify that purchase MFatwaKeb?;

YB Mohammad Nizar

rm520k utk no plate WWW1, Xkan nak letak kat kereta proton atau motor kut? Ramai lagi rakyat yang masih kais pagi mkn pagi kais ptg mkn petang!.

THE DEFENDANTS' PUBLICATION IN BULETIN UTAMA ON 30 MAY 2012

[7] The full transcript of the news published by the defendants in Buletin Utama at 8pm on 30 May 2012 (ABOD pp 10–11), read by the two news presenters, Nur Jamalina Mohd Jamali and Kamarudin Mape, states the following:

NUR JAMALINA MOHD JAMALI:

POLIS MENUBUHKAN *SATU PASUKAN KHAS UNTUK MENYIASAT TUDUHAN ADUN PASIR PANJANG, DATUK SERI MOHAMMAD NIZAR JAMALUDDIN, KONONNYA SULTAN JOHOR MENGGUNAKAN WANG RAKYAT UNTUK MEMBIDA NOMBOR PENDAFTARAN WWW1.*

KAMARUDIN MAPE:

MENURUT KETUA POLIS JOHOR, DATUK MOHAMMAD MOKHTAR SHARIFF, KES DISIASAT MENGIKUT AKTA HASUTAN.

KETUA POLIS JOHOR, DATUK MOHAMMAD MOKHTAR SHARIFF:

SEHINGGA PETANG INI, POLIS JOHOR TELAH MENERIMA 8 LAPORAN POLIS. JADI KITA TELAH MENUBUHKAN SATU PASUKAN KHAS YANG DIKETUAI OLEH KETUA POLIS DAERAH JOHOR BHARU UTARA, ASSISTANT KOMISIONER POLIS ROSLAN. KITA AKAN MELENGKAPKAN KERTAS SIASATAN SECEPAT MUNGKIN.

NUR JAMALINA MOHD JAMALI:

INIDIVIDU DAN PIHAK BERKAITAN KATANYA, AKAN DIPANGGIL UNTUK MEMBANTU SIASATAN.

KERTAS SIASATAN AKAN DISERAHKAN KEPADA PEJABAT TIMBALAN PENDAKWARAYA SEBAIK SIASATAN SELESAI.

DATUK SERI NIZAR SEBELUM INI MENCETUSKAN KEMARAHAN RAKYAT JOHOR APABILA KENYATAAN MENERUSI TWITTERNYA MENUDUH SULTAN JOHOR, SULTAN IBRAHIM MENGGUNAKAN WANG RAKYAT UNTUK MEMBIDA NOMBOR PENDAFTARAN WWW1 BERNILAI 520 RIBU RINGGIT.

JUMLAH ITU KATANYA, LEBIH BAIK DIGUNAKAN UNTUK MEMBANTU GOLONGAN MISKIN.

TUDUHAN ITU KEMUDIAN DISANGKAL TENGKU MAHKOTA JOHOR, TUNKU ISMAIL IDRIS YANG BERTITAH, BAGINDA DAN AYAHANDA BAGINDA TIDAK PERNAH MENERIMA WANG YANG DIBERI KERAJAAN.

SEBALIKNYA SEMUA WANG YANG DIPERUNTUKKAN UNTUK KERABAT DIRAJA JOHOR DISALURKAN KEPADA YAYASAN IBRAHIM DAN YAYASAN ISKANDAR UNTUK BANTUAN KEPADA RAKYAT DAN KERAJAAN NEGERI.

SEHUBUNGAN ITU, DATUK SERI NIZAR DIMINTA SELIDIK TERLEBIH DAHULU SEBELUM MENGELUARKAN KENYATAAN.

KAMARUDIN MAPE:

SEMENTARA ITU, PEMUDA UMNO PULAI DAN BEBERAPA PERTUBUHAN BUKAN KERAJAAN MEMBUAT LAPORAN POLIS TERHADAP DATUK SERI NIZAR.

LAPORAN DIBUAT SETIAUSAHA KERJA PEMUDA UMNO PULAI ASYIK RAHMAT Dl BALAI POLIS TAMPOI, MALAM SEMALAM.

SELAIN MEMBUAT LAPORAN BAGI MEMBOLEHKAN POLIS MENJALANKAN SIASATAN, MEREKA JUGA MENDESAK DATUK SERI NIZAR MEMOHON MAAF SECARA TERBUKA.

KENYATAAN DATUK SERI NIZAR DIANGGAP SEBAGAI BIADAP TERHADAP SULTAN JOHOR DAN MEREKA SEBAGAI RAKYAT JOHOR AMAT MARAH DAN TERSINGGUNG DENGAN KENYATAAN ADUN PASIR PANJANG ITU.

NUR JAMALINA MOHD JAMALI:

SEMENTARA ITU DATUK SERI NIZAR MENERUSI TWITTERNYA MEMOHON MAAF BERHUBUNG KENYATAAN YANG DIKELUARKANNYA. BELIAU TURUT MENAFIKAN KENYATAAN ITU BERBAUR HASUTAN.

APA YANG DINYATAKAN SEBELUM INI TIDAK SAMA SEKALI MEMPERTIKAIKAN KEPUTUSAN SULTAN JOHOR UNTUK MEMBIDA NOMBOR PENDAFTARAN ITU DENGAN HARGA TERTINGGI.

KENYATAAN ITU KATANYA, DIBUAT HANYA SECARA UMUM ATAS PANDANGAN SEBAGAI SEORANG RAKYAT. (Emphasis added.)

[8] The plaintiff contended that the news report under the heading 'Pasukan Khas Siasat Dakwaan Nizar' together with a photograph of the plaintiff were published in the defendants' said Buletin Utama.

[9] The plaintiff is suing the defendants for the alleged defamatory words,

which I have restated above in bold and underlined, as averred in para 5 of the statement of claim.

THE LAW ON DEFAMATION

[10] A defamatory statement is a statement which tends to lower a person in the estimation of right-thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to convey an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business (see *Halsbury's Laws of England* (4th Ed), p 7, para 10).

[11] The burden of proof is on the plaintiff to show that:

(a) the statements or words complained of were capable to have or had the tendency of bearing a defamatory meaning;

(b) the statements or words referred to the plaintiff; and

(c) the statements or words which formed the subject matter of the action had been published (see *Ayob bin Saud v TS Sambanthamurthi* [1989] 1 MLJ 315; [1989] 1 CLJ 152; [1989] 1 CLJ (Rep) 321).

[12] It is only after the three elements required of the plaintiff had been satisfied, would the burden then shift to the defendants, to prove on credible evidence the pleaded defence of the defendants and/or that the alleged words or statement were not defamatory (see *Lim Guan Eng v Utusan Melayu (M) Bhd* [2012] 2 MLJ 394 at pp 402–403; [2012] 2 CLJ 619 at p 626).

[13] I shall now consider (b)–(c) above first, followed by (a).

(b) Whether the statement or words referred to the plaintiff

(c) Whether the statements or words which formed the subject matter of the action had been published

[14] It is not in dispute between the two parties that the statement or words in the news report in Buletin Utama on 30 May 2012 refer to the plaintiff.

[15] Neither is it in dispute that the alleged defamatory words had been published ie broadcasted in the defendants' Buletin Utama news slot at 8pm of 30 May 2013.

(a) Whether the statements or words complained of were capable to have or had the tendency of bearing a defamatory meaning

[16] In para 7 of the plaintiff's statement of claim, the plaintiff averred that the news published by the plaintiff is defamatory and/or is libel against the plaintiff since it refers to the plaintiff and in its natural and ordinary meaning and/or by way of insinuation and innuendo, if read together and/or separately, carries the meaning and is understood, amongst others, the following as stated in sub-paras 7(a)–(i) of the statement of claim:

(a) Plaintif adalah seorang penderhaka kepada Sultan Johor;

(b) Plaintif adalah seorang ahli politik yang anti-sultan;

(c) Plaintif seorang ahli politik yang cuba menghasut rakyat untuk membenci Sultan Johor;

(d) Plaintif telah melakukan satu kesalahan jenayah;

(e) Plaintif menuduh Sultan Johor telah menyalahguna wang rakyat dalam pembelian nombor plat WWW1 yang dibida pada harga RM520,000;

(f) Plaintif menuduh Sultan Johor telah mencampuri dan mengawal pentadbiran kerajaan negeri Johor untuk kepentingan peribadi Sultan Johor;

(g) Plaintif menuduh Sultan Johor telah menyalahgunakan kapasitinya sebagai Sultan untuk menyalahguna wang rakyat untuk kepentingan peribadinya sendiri;

(h) Plaintif menuduh Sultan Johor terlibat dengan rasuah salahguna kuasa;

(i) Plaintif menuduh Sultan Johor menjadikan kerajaan negeri sebagai kuda tunggangan baginda untuk mencapai objektifnya sendiri.

[17] At this stage, by comparing the plaintiff's three tweets with the words complained of in the defendants' publication, it is clear that the plaintiff was merely tweeting, with no mention of the person who is the subject matter of the tweets, the following:

(a) RM520k can be spent to assist so many Johor Malay people who are still poor who need assistance for their daily necessities, or to build 20 'pprt' houses (ie low cost houses for the lower income group);

(b) but, if comparing 24 million diamond ring by rosmah, then RM520k for WWW1 registration plate is nothing! But now does one justify that purchase? 'MFatwaKeb'?; and

(c) RM520k for a No Plate WWW1, surely it is not to place it on a proton car or 'motor kut'? Many people barely have enough for their daily subsistence.

[18] However, in the words complained of, the defendants published in Buletin Utama that:

(a) a special task force has been established to investigate the allegations of State Legislative Assembly Member for Pasir Panjang, Datuk Seri Mohammad Nizar Jamaluddin, that apparently the Sultan of Johor had used public funds to bid for the registration No WWW1; and

(b) Datuk Seri Nizar before this had incurred the wrath of the Johor people when through his Twitter statement accused the Sultan of Johor, of using public money to bid for the Registration No WWW1 valued at RM520k.

[19] From the above comparison of the plaintiff's tweets and the defendants' publication, it is without doubt that the defendants had gone far beyond the contents of the plaintiff's tweets. Nowhere did the plaintiff refer to any specific person, in particular, the Sultan of Johor, in his three tweets regarding the RM520k being used to bid for the registration number plate, WWW1 ('the number plate'). Neither was there any direct allegation or accusation by the plaintiff against the Sultan of Johor in using public funds to bid for the same number plate. The words 'menuduh' and 'menggunakan wang rakyat' as published by the defendants were added by the defendants themselves because nowhere do such words appear in the plaintiff's tweets. The defendants further published the news that the accusation of the Sultan of Johor using public funds to bid for the number plate was later denied by the Crown Prince of Johor who, through his Twitter, stated that the Sultan had never received money from the government. Instead, all moneys allocated to the Johor Royalty were channeled to Yayasan Ibrahim and Yayasan Iskandar to assist the people and the state government.

[20] The defendants further published the news report that the plaintiff had made an apology in his tweet regarding his statements. This is factually incorrect and not true. The plaintiff confirmed that he had never made any apology through Twitter.

[21] The court finds that the defendants' publication, considered in the natural and ordinary meaning of the words used, and having regard to the ordinary intelligence and knowledge of worldly affairs that a reasonable man on the street possesses, are defamatory of the plaintiff.

[22] The defendants' publication of the news is clearly defamatory of the plaintiff to the extent as averred by the plaintiff in para 7 of the statement of claim ie it conveys the following meaning or imputations, that:

(a) he is a traitor against the Johor Sultan;

(b) he is an anti-Sultan politician;

(c) he is a politician who incites hatred against the Sultan;

(d) he has committed a criminal offence;

(e) he accused the Sultan of misusing public funds in securing the bid for the number plate WWW1;

(f) he accused the Sultan of interfering with the Johor State administration to advance his (the Sultan's) personal interest;

(g) he accused the Sultan of misuse of power and corruption; and

(h) he accused the Sultan of using the state government as a platform to achieve his own personal interest.

[23] The Buletin Utama news report was aired throughout the country, with a few million viewers watching it at prime time. It is clear that the defendants' defamatory statements have the tendency to lower the plaintiff in the estimation of the right-thinking members of society and expose him to hatred, ridicule or contempt. The plaintiff is a prominent politician and opposition leader, as can be seen in the numerous high positions that he holds, in Parliament and at state level. It is without doubt that the defendants' publication is totally damaging to the plaintiff's image, reputation and career.

THE DEFENDANTS' DEFENCE

Justification

[24] Under common law, it is not necessary to prove the truth of every single allegation in the allegedly defamatory statement for the defence of justification to prevail. In *Edwards v Bell* (1824) 1 Bing 403 Burrough J stated that the defence 'must be justified as meets the sting of the charge'.

[25] In the Malaysian context, s 8 of the Defamation Act 1957 provides:

> Justification
>
> 8 In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges.

[26] In *Dato' Seri Anwar bin Ibrahim v Dato' Seri Dr Mahathir bin Mohamad* [1997] 4 MLJ 58; [1999] 7 CLJ 32, Rk Nathan J (as he then was), in addressing the defence of justification, stated at p 69 (MLJ); p 39 (CLJ):

A It is settled law that in a suit for defamation, justification is a complete defence, if the same is available to the defendant. At common law the defendant was required to prove the truth of all the material statements in the libel. However, by virtue of s 8 of the Defamation Act 1957 (the Act) the defence of justification 'shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges'. It follows therefore that what is true, cannot be defamatory. This must be on grounds of public policy because the exposure of truth must be paramount when compared to that of reputation.

C **[27]** In *Chong Swee Huat & Anor v Lim Shian Ghee (t/a L&G Consultants & Education Services* [2009] 3 MLJ 665, Zainun Ali JCA (as she then was) after referring to s 8 of the Defamation Act 1957 stated at p 710:

D In other words, a purposive approach is taken in interpreting s 8 — when for a defence of justification to be upheld, it is not necessary to prove the truth of every word in the statement said to be defamatory. What is relevant is actually the truth of the imputation of the overall statement.

[28] Similarly, in *Chew Peng Cheng v Anthony Teo Tiao Gin* [2008] 5 MLJ E 577, Hamid Sultan JC (as he then was) at p 592 noted that the plea of justification does not require every word of the alleged libel to be proved:

F In a plea of justification, it is essential for the defendant to prove that (i) the defamatory imputation is true (ii) justify the precise imputation complained of and (iii) prove the truth of all the material statements in the libel. There must be substantial justification of the whole libel. However, it is not necessary to prove the truth of every word of the libel (see *Workers Party v Jay Boon Too* [1975] 1 MLJ 47). Further it is not necessary to prove the truth of every charge if the words not proved to be true do not materially injure the plaintiff's reputation, having regard to the truth of the remaining charges.

G

[29] It is the plaintiff's case that the Buletin Utama wrongly accused him of making the allegation that the Sultan of Johor had used public funds to bid for WWW1.

H

[30] The defendants submitted that the words in the Buletin Utama are true in substance and in fact.

[31] If the defendants are able to show that the plaintiff had indeed I substantially made such an allegation against the Sultan of Johor, then the defence of justification would succeed.

[32] The defendants contended that the plaintiff did, in his tweet messages, launch the criticism against the Sultan of Johor for having indulged in the

extravagance of bidding RM520,000 for the number plate. The plaintiff stated that the money would be better spent in helping the poor eg to build '20 rumah pprt'.

[33] The question is whether the plaintiff was indeed accusing the Sultan of Johor of using public funds to make the bid for WWW1.

[34] It is true, as submitted by counsel for the defendants, that if the Sultan of Johor was using his own money to bid for WWW1, it is his own personal right. It is his own money. There is no question of using that money to help the public. It is only possible to criticise the Sultan for his bid if he had used public funds.

[35] In his re-examination, the plaintiff stated that as an opposition policitian, a Member of the State Legislative Assembly Perak, and former *Menteri Besar* of Perak, including being a committee member for the PAS Centre, he felt that RM520,000 would be better ('elok') used for the poor 'rakyat' more so when he had read about the previous statement made by the consort of the Sultan of Johor, in the *Star* newspaper, that there are many poor people in Johor eg the flood victims standing in line to receive RM500 and she would not buy a designer handbag that costs RM90,000 because the purchase is sinful considering how many families would the cost of that handbag feed. The plaintiff said that such statement had influenced him to make the tweets.

[36] The court is of the view that it is highly improbable that the plaintiff, after being influenced by the above statement of the consort of the Sultan of Johor, would tweet about the Sultan spending the RM520,000 for the bid if the plaintiff was merely referring to the personal funds of the Sultan being used. For after all, the plaintiff has no moral or legal obligation or duty to check on the alleged personal extravagance of the Sultan. It is more probable that the plaintiff, being a politician, was insinuating through his tweet messages that the Sultan should not be using the RM520,000, which are public funds, since such funds would be better used to build 20 'pprt' houses for the poor people. By referring to 'pprt' houses, it is clear that the plaintiff was not referring to the personal funds of the Sultan because it would be uncalled for and illogical for the plaintiff to suggest that such personal funds should be used for building those houses when there is no personal obligation on the part of the Sultan to build those houses with his own money.

[37] Therefore, any reasonable man would conclude that the plaintiff's tweet messages were indirectly hinting at or alleging that the Sultan of Johor had used public funds to make the bid for WWW1.

[38] It should be noted here that the plaintiff's tweet messages on 28 May 2012 drew various responses.

[39] Almost immediately after the tweet statements were published by the plaintiff, the Crown Prince of Johor on 28 May 2012 itself made his tweet statement expressing his displeasure and stating that the Royal family had not used a single cent of the government funds allocated to them. Instead, all such funds were channeled into the Yayasan Iskandar and Yayasan Ibrahim to help the people of Johor.

[40] It is highly improbable, as contended by the plaintiff, that the Crown Prince was not responding to the plaintiff's tweets but was in fact responding to the *Kosmos* newspaper's cartoons that were published in print from 28–31 May 2012. Those cartoons are caricatures which were poking fun at the issue of the WWW1 bid per se. There was no suggestion at all made in those cartoons that the money for the bid should be used for the public. In fact, the plaintiff himself confirmed that one and a half months before the plaintiff's tweets, the *Kosmos* newspaper had already run the story about the WWW1 bid, with criticism. The announcement of the successful bidder for WWW1 was made on Thursday, 24 May 2012. So, according to the plaintiff, *Kosmos* had run the story long before his tweets. The Crown Prince did not post any tweet until the plaintiff's tweets were sent on 28 May 2012. Therefore, it is without doubt that the Crown Prince's tweet message was a direct response to the plaintiff's tweet messages. In fact, the Crown Prince ended his tweet with the words, 'So before You open your mouth, Do your research'. This clearly shows that the Crown Prince was actually referring to the plaintiff, and not to the *Kosmos* newspaper.

[41] As submitted by counsel for the defendants, the other social media also joined in the fray. The *Star* online dated 29 May 2012 (which is one day before the Buletin Utama) then picked up the issue. In its report entitled 'Johor Tengku Mahkota hits out at critics of WWW1 bid', it is expressly stated that the Crown Prince was responding to the plaintiff's criticisms in his tweet messages (see ABOD pp 22–23).

[42] The *New Straits Times* report dated 30 May 2012 (ABOD p 24) was entitled 'Police to probe Nizar's WWW1 statement'.

[43] The Yahoo news report dated 30 May 2012 was entitled 'UMNO Youth and NGOs lodge report against Mohammad Nizar' (ABOD pp 33–36).

[44] The *Utusan Kini* report dated 30 May 2012, entitled 'Datuk Seri Mohammad Nizar Jamaluddin — Disiasat WWW1', similarly connects the Crown Prince's tweet message to the plaintiff's tweet messages (see ABOD pp 26–32).

[45] The court agrees with the defendants' submission that the plaintiff's tweet messages, read and understood by any reasonable man, clearly insinuate that the Sultan of Johore had used public funds for the WWW1 bid. The court is unable to agree with the plaintiff's suggestion that the plaintiff's tweets must be construed literally and entirely divorced from any inferences, implications and the normal understanding of a reasonable man. That would be artificial and unreal considering that the plaintiff's tweet messages created intense interest amongst members of the public.

[46] The defendants admitted that the plaintiff did not publish any apology in his Twitter. Therefore, the defendants did make a mistake in publishing in the Buletin Utama news report that the plaintiff made such an apology through his Twitter. However, the defendants pointed out that the plaintiff did make a public apology, which he gave through his press statement, and which was covered by the press.

[47] The *Star* online dated 31 May 2012 (ABOD pp 37–38), entitled 'Nizar says sorry over remarks on Johor Sultan's WWW1 bid', reported that the plaintiff offered 'a thousand apologies if his remarks on the Johor royalty's successful bid for the car registration number WWW1 had caused hurt and disappointment' and that he was 'heart-stricken by claims that his remarks were seditious'. It is to be noted that in his unreserved apology, the plaintiff did not even made any attempt to refute the various earlier press statements stating that he had accused the Sultan of Johor of using public funds to make the WWW1 bid. One can therefore reasonably infer that the plaintiff himself accepted that his tweet messages carried the insinuation that the Sultan of Johor had made the bid using public funds.

[48] Other than the mistake made by the defendants in reporting the news that the plaintiff made an apology through his Twitter, the court finds that the Buletin Utama news report is, for the greater part of it, substantially true, in fact. In applying s 8 of the Defamation Act 1957, the court is satisfied that the defendants' defence shall not fail even if the last part of the news regarding the plaintiff's apology in Twitter is erroneous.

[49] Going by the foregoing, I hold that the defendants have succeeded in their defence based on justification. The defence of justification is a complete defence. On this ground alone, the plaintiff's claim ought to be dismissed.

Qualified privilege and the defence under the Reynolds principles

[50] Qualified privilege can only be invoked if there is a duty on the part of the maker of a statement to publish it. There must be a corresponding interest on the part of the person to whom the statement is made, to receive it. Truth is not a pre-requisite to the defence of qualified privilege. If the statement turns out to be false, then the defence is required. The defence can only succeed if the defendants can show that there is no malice in reporting the alleged defamatory statement.

(See *Adam v Ward* [1917] AC 309, *Toogood v Spyring* (1834) 1 Cr M & R 181, and *Sivabalan a/l P Asapathy v The New Straits Times Press (M) Bhd* [2010] 9 MLJ 320; [2010] 7 CLJ 885).

[51] The *Reynolds* defence, arising from the House of Lords case, *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127 is founded on the two main principles of publication in the public interest and responsible journalism.

[52] The defendants are able to establish that they have a duty to disseminate the information on the plaintiff's tweet messages which is of public interest considering that it was, in the words of DW1, the 'hot topic' at that time. The members of the public have a corresponding interest in receiving such information.

[53] The next question is whether the defendants had practised responsible journalism and acted reasonably in the publication of the Buletin Utama news report. The House of Lords in *Reynolds* laid down some guidelines, which are not exhaustive, to determine reasonableness:

(a) the seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true;

(b) the nature of the information, and the extent to which the subject matter is of public concern;

(c) the source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind, or are being paid for their stories;

(d) the steps taken to verify the information;

(e) the status of the information. The information may have already been the subject of an investigation which commands respect;

(f) the urgency of the matter. News is often a perishable commodity;

(g) whether comment was sought from the plaintiff. He may have the

information that others do not possess or have not disclosed. An approach to the plaintiff may not always be necessary; A

(h) whether the article contained the gist of the plaintiff's side of the story;

(i) the tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of facts; and B

(j) the circumstances of the publication, including the time.

[54] Applying the above reasonableness tests, the court finds the following:

(1A) the allegations of the defendants made in the Buletin Utama news report are serious and can harm the plaintiff's reputation and career as a politician; C

(1B) the matter is of great public concern to the point that even the Pulai UMNO Youth and several non-governmental organisations ('NGOs') have lodged police reports against the plaintiff for his tweet messages, and the police had to set up a special team to investigate the matter; D

(3A) the defendants relied on the plaintiff's own tweet messages as the source of their information for their publication; E

(4A) the defendants admitted that they failed to verify the information with the plaintiff himself on the ground that the plaintiff's tweet messages are self-explanatory;

(5A) the information is sensitive because at that point the Pulai UMNO Youth and NGOs were already complaining to the police about the plaintiff's tweet messages in relation to his allegations against the Sultan of Johor. The Head of the Johor Police and the inspector general of police were already cautioning the members of the public not to make unnecessary statements but to leave the police to complete their investigations; F

(6A) there was urgency in the publication of the news considering that it was the 'hot topic' at that time and members of the public are concerned and would like to know more about it; G

(7A) the defendants did not seek any comments from the plaintiff personally. They merely relied on the plaintiff's tweet messages and put the news regarding the tweet messages, *but not the actual tweet messages*, together with the plaintiff's photograph and news of other Police reports lodged against the plaintiff, the police setting up the special team to investigate possible sedition by the plaintiff, the Crown Prince's tweet response, and the plaintiff's apology in Twitter; H I

(8A) the defendants' news report did not just contain a gist of what the plaintiff stated in his tweets, but went and added other words such as 'menuduh' and 'menggunakan wang rakyat' which the plaintiff did not say in his tweets;

(9A) the article was read in the usual manner by the two news presenters of the defendants on the daily 8pm slot for the Buletin Utama. However, the presentation was rather eye-catching and dramatic, with some tone of sensationalising the news; and

(10A) the timing of the publication was perfect. The publication was at the right time when the topic was hot, and the public were all ears to hear the news. The defendants were clearly discharging their responsibility to disseminate the news in a timely manner.

[55] From the above, it is clear that while the news report is of public interest and the defendants have a duty to publish the news of the plaintiff's tweet messages, the defendants did not practise responsible journalism in verifying with the plaintiff himself regarding his tweet messages and getting his comments on the matter. The defendants' publication was lop-sided, leaning towards giving a negative impression about the plaintiff even before the police have completed their investigations. It should be noted that until today the public prosecutor has not preferred any charge against the plaintiff for sedition or other criminal offence. The defendants' publication had certainly put the plaintiff in a tight spot, with such wide publicity, at a time when there was already a strain in his relationship with the Johor Royalty.

[56] The only mitigating factor for the defendants is that there does not appear to be any malice on their part to publish the news report. The plaintiff contended that the TV3 and/or the defendants are the mouth-piece of the UMNO and that the majority of the first defendant's shares are owned by prominent UMNO leaders. However, the plaintiff failed to produce concrete evidence on this. No company search result was tendered to prove such shareholding. On the other hand, DW1, testified that the defendants did not just publish reports in favour of any political party or personalities, or publish UMNO news in a good light, but in several instances they had published news and chastised the UMNO for their shortcomings eg coverage of the National Feedlot Corporation, and the Khir Toyo stories regarding the former *Menteri Besar* of Selangor DE.

[57] This court has the delicate task of balancing the interests of the plaintiff and that of the defendants. In a developing country like ours, moving towards achieving Vision 2020 and striving to make a name for our nation as one with a mature and civil society, I am of the view that there should be freedom on the part of the plaintiff to tweet his personal messages in his own Twitter account

for as long as the laws on defamation and sedition and other laws of the land are not breached. Similarly, the defendants should be given the freedom to report news in a transparent and impartial manner, with the leeway to raise queries or even call for investigations as permitted under the *Reynold*s principles.

[58] However, I need to emphasise here that earlier on in this judgment, I had held that the complete defence of justification of the defendants is allowed, and the plaintiff's action ought to be dismissed on that ground. With that decision, even with the current finding, under the defence of qualified privilege and the *Reynolds* defence, that to some extent the defendants had failed to practise responsible journalism by not verifying with the plaintiff on his tweet messages, such failure is mitigated by the absence of malice on the defendants' part. Therefore, the court is more inclined towards allowing the defendants to be relieved from any liability for defamation of the plaintiff.

Fair comment

[59] The ingredients which must be established for this defence of fair comment to succeed are:

(a) the words complained of are comments and not facts;

(b) there is a basis for the comments;

(c) the comments are of public interest; and

(d) the comments are made honestly and without malice.

(See *Hajijah Bana v Ramli Usop* [2000] MLJU 161; [2000] 6 CLJ 184).

Gatley on Libel & Slander, (8th Ed), at p 691 stated:

> … On such matters, it is desirable that all should be able to comment freely, and even harshly, so long as they do so honestly and without malice.

[60] Regarding this defence of fair comment, I am in agreement with counsel for the defendants that the defendants have satisfied the above four ingredients to justify their defence:

The words complained of are comments and not facts

[61] The defendants' Buletin Utama news report of 30 May 2012 has met this requirement. The defendants' report conveys the following:

(a) the plaintiff had 'kononnya' accused the Sultan of Johor of using public funds to bid for the number plate;

(b) the plaintiff had incurred the wrath of the 'rakyat' in making his statement via Twitter; and

(c) the statement had also led to police investigations on *possible* sedition.

[62] The defendants' statements are comments or opinion, but they are not facts. The defendants reported that the plaintiff had purportedly accused the Sultan of Johor of using public funds. That clearly is a comment, as opposed to a fact. The expression that the plaintiff's statement had resulted in public displeasure is also a comment. On the whole, the court finds that the Buletin Utama news report comes across as expressions of comments by the defendants.

There is a basis for the comments

[63] The defendants have a basis for its Buletin Utama news report ie the plaintiff's messages tweeted via Twitter.

The comments are of public interest

[64] It is clear from the earlier defence of qualified privilege and the *Reynolds* defence that the subject matter of the news report is one of public interest.

The comments are made honestly and without malice

[65] As I had found earlier under the defence of qualified privilege and the *Reynolds* defence, there is no evidence of malice on the defendants' part.

[66] The court finds that the defence of fair comment on a matter of public interest has been clearly made out by the defendants.

[67] Based on the above considerations, the court dismisses the plaintiff's action against the defendants. Costs are to be borne by the respective parties.

[68] I do not think that costs should be awarded to the defendants

considering that they are only relieved from liability for the defamatory statements made against the plaintiff due to their defence which was allowed by the court.

Claim dismissed.

Reported by Ashok Kumar